



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Syllor, Inc.
File: B-234917
Date: July 12, 1989

DIGEST

1. Agency's rejection of bid as nonresponsive because of uncertainty as to identity of actual bidder is proper where bid was submitted by an entity that certified itself as both a corporation and a joint venture.
2. Protest that agency is not complying with laws regarding small disadvantaged businesses (SDBs) is denied where solicitation contained evaluation preference for SDBs and protester became low bidder only by virtue of its application.
3. Protest allegation that agency allowed awardee in an unrelated procurement to clarify its bid after bid opening but would not permit protester to correct its nonresponsive bid in this procurement is denied where record shows that information supplied by the awardee related to its responsibility and not to responsiveness.

DECISION

Syllor, Inc., protests the rejection of its bid under invitation for bids (IFB) No. DLA400-89-B-0253 issued by the Defense Logistics Agency.

We deny the protest.

On November, 18, 1988, DLA issued the IFB for various quantities of trichloroethane for delivery to three different destinations. The solicitation provided for multiple awards and contained three line items. Eight bidders responded to the solicitation, and Syllor was found

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to be low on all three items.^{1/} The contracting officer, however, determined that the protester's bid was ambiguous as to the bidder's legal status and identity and rejected the bid as nonresponsive.

Syllor protests that agency knew that Syllor was a Virginia corporation and that the protester should have been given the opportunity to clarify its bid. Syllor also argues that it is the subject of unequal treatment because other bidders have been given the opportunity to clarify their status after bid opening, and Syllor asserts that this unequal treatment is the result of prejudice and racial discrimination against Syllor. Finally, Syllor argues that the agency has not complied with laws providing preferences to small disadvantaged businesses (SDBs).

The record shows that Syllor completed the "Type of Business Organization" clause in its bid by marking both the corporation and joint venture boxes. The address, telephone number, Data Universal Numbering System (DUNS) code and employer's identification number provided in the bid is that of Syllor, Inc. The "Place of Performance" clause indicated that Syllor intended to use a plant located at a different address from the address of the bidder and that the owner/operator of that plant was Syllor/Ease Chemical.

We find that the agency's rejection of Syllor's bid as ambiguous was proper. The protester in its bid represented that it was both a corporation and a joint venture. Furthermore, the protester indicated that performance would occur at a facility operated by Syllor/Ease Chemical, an entity which the protester has represented to DLA to be a joint venture. This contradictory information caused the agency to question whether Syllor had bid as a corporation or as a joint venture, and because the bidder could not be both a corporation and a joint venture, this made the bid ambiguous. See Syllor, Inc. and Ease Chemical, B-234723, et al., June 6, 1989, 89-1 CPD ¶ ____.

The protester complains that the agency did not allow it to correct the ambiguity. However, since responsiveness is determined from the face of the bid at opening, post-bid-

^{1/} CSD, Inc. submitted the low bid on all three line items. However, the solicitation provided for the application of a 10 percent evaluation preference for small disadvantaged businesses, and after application of this preference the bid submitted by Syllor/Ease became the low bid for all three items.

opening explanations are unacceptable and cannot be used to cure a nonresponsive bid. Schlumberger Indus., B-232608, Dec. 27, 1988, 88-2 CPD ¶ 626.

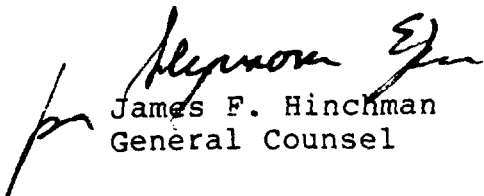
Syllor also argues that the agency is not complying with laws providing preferences for SDBs.^{2/} DLA, however included a 10 percent evaluation preference for SDBs in the solicitation, and by virtue of its application, Syllor displaced another firm to become the low bidder. Since Syllor was rejected for a reason unrelated to its SDB status and would have received award as the low bidder only as a result of the application of the SDB evaluation preference if its bid had not been found ambiguous, we find no support for this allegation.

Finally, Syllor contends that the agency has acted unfairly towards the protester because other bidders have been allowed to clarify their status after bid opening. Essentially, Syllor contends that contracting officials have acted in bad faith. Such allegations require convincing proof since contracting officials are presumed to act in good faith. See Monarch Enterprises, Inc., B-233303, et al., Mar. 2, 1989, 89-1 CPD ¶ 222. Syllor contends that the awardee under IFB No. DLA400-88-B-3875 was allowed to submit information pertaining to its bid after bid opening. Syllor raised this same issue in its earlier protest of IFB No. -3785, which we have already considered and denied. See Syllor, Inc. and Ease Chemical, B-234723, et al., supra, in which we found that the information submitted by the awardee after bid opening did not concern the awardee's responsiveness but concerned the awardee's responsibility

^{2/} Under section 1207 of the National Defense Authorization Act for fiscal year 1987, Pub. L. 99-661, 100 Stat. 3816, 3973 (1986), and section 806 of the Department of Defense (DOD) Authorization Act for fiscal years 1988 and 1989, Pub. L. 100-180, 100 Stat. 1020, 1126 (1987), DOD is required to seek to award 5 percent of the total dollar value of its contracts to SDBs. Although the Acts do not provide for application of evaluation preferences, or any other specific means for attaining the 5 percent goal, an evaluation preference for SDBs is provided for in DOD Federal Acquisition Regulation Supplement § 219.7001 (DAC 88-7), which implements the Acts.

and eligibility for award. Since we find no evidence of unfair or unequal treatment, Syllor's protest on this ground is denied.

The protest is denied.


James F. Hinchman
General Counsel